

**NOT FOR PUBLICATION**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Robert Earl Johnson, ) No. CV11-0780-PHX-SRB  
Petitioner, )  
vs. ) **ORDER**  
Charles Ryan, et al., )  
Respondents )

Petitioner filed a timely Petition for Writ of Habeas Corpus asserting two claims. In Ground One, Petitioner argues that he was improperly sentenced in state court pursuant to A.R.S. § 13-604(A) and (B), when he should have been sentenced pursuant to A.R.S. § 13-702.02. Petitioner claims this sentencing error violates the Fifth, Eighth and Fourteenth Amendments to the United States Constitution. In Ground Two, Petitioner argues that he received illegal sentences in state court in violation of the Fifth, Eighth and Fourteenth Amendments because the prior felony conviction used to enhance his sentence did not qualify as a historical prior felony conviction under Arizona law. Respondents filed an answer. Petitioner replied.

The Magistrate Judge issued his Report and Recommendation on October 24, 2011 recommending that the Petition be denied because Petitioner argued that his sentences were imposed in violation of Arizona law and such state law claims are not cognizable on federal habeas corpus review. The Magistrate Judge also concluded that Petitioner's reference to the Fifth, Eighth and Fourteenth Amendments to the United States Constitution do not transform

1 his state law claims into federal ones. Petitioner filed timely objections to the Report and  
2 Recommendation on November 7, 2011, arguing that his two issues are cognizable on federal  
3 habeas review and claiming that his custody is in violation of the United States Constitution  
4 because he was denied procedural and substantive due process of law under the Fifth and  
5 Fourteenth Amendment, was subjected to cruel and unusual punishment under the Eighth  
6 Amendment, and was denied fair sentencing under the Sixth Amendment. Respondents filed  
7 a response to Petitioner's objections agreeing with the analysis of the Magistrate Judge in his  
8 Report and Recommendation.

9         This Court also agrees with the Magistrate Judge's Report and Recommendation.  
10 Petitioner raised only state law claims related to sentencing in his federal habeas petition. His  
11 references to the Fifth, Eighth and Fourteenth Amendment to the United States Constitution  
12 cannot transform these claims into federal ones as noted by the Magistrate Judge. Similarly,  
13 his citations to the Sixth and Eighth Amendments to the United States Constitution in his  
14 objections also do not transform his state law based sentencing claims into federal claims.

15         IT IS ORDERED overruling Petitioner's objections to the Report and  
16 Recommendation of the Magistrate Judge.

17         IT IS FURTHER ORDERED adopting the Report and Recommendation of the  
18 Magistrate Judge as the Order of this Court.

19         IT IS FURTHER ORDERED that Petitioner's Petition for Writ of Habeas Corpus is  
20 denied.

21         IT IS FURTHER ORDERED that a certificate of appealability and leave to proceed  
22 *informa pauperis* on appeal is denied because Petitioner has not made a substantial showing  
23 of the denial of a constitutional right.

24         DATED this 20<sup>th</sup> day of December, 2011.

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Susan R. Bolton  
United States District Judge